

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
The Status of Competition in the Market	)	MB Docket No. 17-214
For the Delivery of Video Programming	)	
	)	
Implementation of Section 103 of the STELA	)	MB Docket No. 15-216
Reauthorization Act of 2014: Totality of the	)	
Circumstances Test	)	
	)	
Amendment of the Commission’s Rules	)	MB Docket No. 10-71
Related to Retransmission Consent	)	
	)	
Revision of the Commission’s Program Access	)	MB Docket No. 12-68
Rules	)	
	)	
Promoting Innovation and Competition in the	)	MB Docket No. 14-261
Provision of Multichannel Video Programming	)	
Distribution Services	)	

**REPLY COMMENTS OF VERIZON<sup>1</sup>**

Consumers today enjoy a boundless supply of video content and can choose when, where, and how they watch their preferred programming. The record reflects this content explosion and the myriad video providers and distribution platforms that deliver content to consumers.<sup>2</sup> Yet, at the same time, the record also illustrates that many of the Commission’s video regulations are premised on the marketplace of 25 years ago, characterized by a few TV

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<sup>1</sup> The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly-owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> See, e.g., Comments of NCTA – The Internet & Television Association, at 9 (filed Oct. 10, 2017) (“the amount and diversity of content as well as delivery mechanisms has increased exponentially”); Comments of Comcast Corp. and NBCUniversal Media, at 2-16 (filed Oct. 10, 2017); Comments of National Association of Broadcasters, at 3-7 (filed Oct. 10, 2017); Comments of Free State Foundation, at 4-6 (filed Oct. 10, 2017).

broadcast stations and one monopoly cable service per local market. That world no longer exists, and it's time for the Commission to update its media regulations to promote even more competition and consumer choice.<sup>3</sup>

The Commission should ensure that competitive video distributors have reasonable access to must-have programming so they can offer content consumers want at prices they can afford. In the case of broadcast programming, the record demonstrates that the retransmission consent regime – adopted years ago – is broken and harms consumers and competition through skyrocketing fees and increased signal blackouts. The incremental reforms that Verizon and other parties recommend could help modernize this regulatory regime.

Similarly, the Commission's program access protections continue to serve an important role in enabling competitive providers to gain access to must-have programming within the control of incumbent cable operators. As alternative video providers grow and new distributors emerge, the Commission must remain vigilant to ensure that competitive providers continue to have access to this programming on reasonable terms. By adopting Verizon's and other parties' recommendations, the Commission can ensure that consumers have competitive options for video distribution services.

And while the Commission modernizes its media regulations, it should ensure that legacy regulations do not impede the growth of innovative online video distribution services. Online video distributors (OVDs) have developed successful services free of the regulations applicable to cable operators. The Commission should therefore confirm that OVDs are not subject to

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<sup>3</sup> See Free State Foundation at 8-11. The Commission has opened MB Docket No.17-105 for this purpose. See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017). Cf. Comments of Verizon, MB Docket No. 17-105 (filed July 5, 2017).

legacy cable regulations so that they can continue this successful trajectory and bring consumers even more competitive choices.

**I. THE RECORD CONFIRMS THE CONTINUED IMPORTANCE OF REASONABLE ACCESS TO PROGRAMMING FOR COMPETITIVE VIDEO DISTRIBUTORS.**

While market forces are producing new choices for consumers in how and from whom they can access and watch video programming, the ability to obtain the programming that consumers demand on reasonable terms remains critical to competitive video distributors. Multiple commenters recognize that access to certain TV broadcast programming comes at an increasingly high price accompanied by the risk that broadcasters will black out their programming when Multichannel Video Programming Distributors (MVPDs) protect their subscribers by resisting those higher prices.<sup>4</sup> As DISH noted, “[e]ven as MVPDs try to keep up with the proliferation of viewing options that consumers enjoy, they face the spiral of escalating retransmission fees and an increasing number and frequency of blackouts.”<sup>5</sup> This record demonstrates that the current retransmission consent regime is broken and that the Commission should introduce reforms to protect consumers from escalating fees and TV signal blackouts.<sup>6</sup>

Several commenters echo Verizon’s recommendations that the Commission should eliminate rules that favor broadcasters in negotiations. For example, the Commission should get

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<sup>4</sup> See Comments of INCOMPAS, at 4-5 (filed Oct. 10, 2017); Comments of ITTA, at 2-3 (filed Oct. 10, 2017); Comments of Public Knowledge, at 4 (filed Oct. 10, 2017); Comments of WTA – Advocates for Rural Broadband, at 3-4 (filed Oct. 10, 2017); Comments of Verizon, at 6-7 (filed Oct. 10, 2017).

<sup>5</sup> Comments of DISH Network, at 3 (filed Oct. 10, 2017).

<sup>6</sup> See *id.* at 4-15; Comments of NTCA, at 5 (filed Oct. 10, 2017); ITTA at 1-5; WTA at 5-6; Verizon at 8-9. See generally *Implementation of Section 103 of the STELA Reauthorization Act of 2014; Totality of the Circumstances Test*, Notice of Proposed Rulemaking, 30 FCC Rcd 10327 (2015) (seeking comment on revisions to the Commission’s rules for negotiating retransmission consent agreements in good faith).

rid of the network non-duplication and syndicated programming exclusivity rules, which would allow MVPDs to pursue alternative sources of TV programming and thereby restore some balance to retransmission consent negotiations.<sup>7</sup> The Commission can also protect consumers from blackouts by adopting standstill and interim carriage requirements when broadcasters would otherwise pull their signals.<sup>8</sup> And while these reforms are underway, the Commission can and should ensure that broadcasters and MVPDs negotiate in good faith by finding that broadcasters' tactics such as forced bundling are inconsistent with the existing good faith requirements.<sup>9</sup>

Similarly, Verizon and others emphasize the continued significance of the program access rules in facilitating competitive providers' access to programming that they need in order to offer a meaningful competitive alternative to consumers.<sup>10</sup> Notwithstanding the competitiveness of the video marketplace, cable incumbents continue to control some of the most important programming, including such must-have programming as regional sports networks (RSNs). As the number of competitive distribution sources increases, "a vertically-integrated firm has both the incentive and ability to disadvantage rival MVPDs by either raising the prices it charges rivals for programming or withholding this programming altogether."<sup>11</sup>

The Commission should therefore ensure that adequate measures are in place to enforce the program access protections in Section 628 of the Communications Act, including adopting

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<sup>7</sup> See Free State Foundation at 9; Verizon at 11-12. *See generally Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, ¶¶ 40 *et seq.* (2014) (seeking comment on elimination of the network non-duplication and syndicated programming exclusivity rules).

<sup>8</sup> See DISH at 13-14; Verizon at 12.

<sup>9</sup> See ITTA at 5; DISH at 14; WTA at 6; NTCA at 9-10; Verizon at 9-10.

<sup>10</sup> See Comments of American Cable Association ("ACA"), at 2-3 (filed Oct. 10, 2017); Verizon at 13-15.

<sup>11</sup> ACA at 2.

rebuttable presumptions that an exclusive contract for a cable-affiliated RSN is an “unfair act” under Section 628(b) (whether it is terrestrially-delivered or satellite-delivered) and that complainants challenging an exclusive contract for a cable-affiliated RSN are entitled to a standstill of the existing contract for that RSN.<sup>12</sup> Even as the video marketplace offers consumers more choices, such measures remain important to ensure that competitive providers have access to the programming consumers value.

## **II. THE COMMISSION SHOULD CONFIRM THAT OVDS ARE NOT SUBJECT TO LEGACY CABLE REGULATION.**

The Commission should confirm that online video distributors (OVDs) are not subject to legacy cable regulation.<sup>13</sup> Several commenters note that today’s competitive video market makes inapt regulations that the Commission adopted to promote competition in a marketplace with little to no competition.<sup>14</sup>

There remains a glaring disconnect between the competitive state of today’s convergent, IP-based digital video market and the legacy regulatory framework that was premised on early 1990s cable bottlenecks and analog technology. Old regulations offer little to no benefit but impose compliance costs and risks dis-incentivizing innovation and investment.<sup>15</sup>

Imposing legacy cable regulations on OVDs would be highly inappropriate given that these services have thrived in a market rife with competition and have contributed heavily to the growth in consumer choice in the current video marketplace. This is particularly true with

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<sup>12</sup> See *Revision of the Commission’s Program Access Rules*, Report and Order in MB Docket Nos. 12-68, 07-18, 05-192; Further Notice of Proposed Rulemaking in MB Docket No. 12-68; and Order on Reconsideration in MB Docket No. 07-29, 27 FCC Rcd 12605, ¶¶ 74-79 (2012).

<sup>13</sup> The Commission has already tentatively concluded that over-the-top video services provided by a cable operator are not subject to cable regulation. See *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, ¶ 78 (2014).

<sup>14</sup> See NCTA at 2-4; Comcast at 16-18; Free State Foundation at 8.

<sup>15</sup> Free State Foundation at 3.

respect to cable franchising obligations that were never intended to apply to over-the-top video services.<sup>16</sup>

Traditional cable operators are subject to local franchise authorities (LFAs) and their management of the public rights of way. LFAs may have a role to play when entities seeking to deploy new cable services to subscriber homes dig up streets and sidewalks or otherwise disturb public rights of way. But OVDs give consumers the ability to watch video programming from anywhere consumers can obtain an Internet connection, without regard to rights-of-way access. OVDs should not be required to seek permission from thousands of localities throughout the country in order to offer a video service that rides over the Internet. Not only is such a regulation inapt as a practical matter, but it is inconsistent with the Commission's goal of promoting video competition.<sup>17</sup>

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<sup>16</sup> See Verizon at 15-18.

<sup>17</sup> See *Media Bureau Seeks Comment on the Status of Competition in the Market for the Delivery of Video Programming*, Public Notice, 32 FCC Rcd 6654, § V (MB 2017) (seeking information on regulations affecting competition in the video marketplace).

### III. CONCLUSION.

For the reasons set forth in Verizon's initial comments and above, the Commission should reform the retransmission consent regime, maintain protections for competitive video distributors to ensure reasonable access to programming, and affirm that OVDs are not subject to legacy cable regulation.

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Respectfully submitted,

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